

4343/16-343

IFW

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: JAMES A. KOVACH

Serial No.: 10/602,406

Filed: June 23, 2003

Title: TUB DRAIN WRENCH

Attorney Docket No.: 16-343

Commissioner of Patents
P.O. Box 1451
Alexandria, VA 22313-1451

I hereby certify that this paper is being deposited today with the U.S. Postal Service as 1st Class Mail addressed to the Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on 4/24/05
By: J. Kovach

PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT

Dear Sir:

Superior Tool Company, assignee of United States patent application no. 10/602,406 hereby petitions the Commissioner to withdraw its Notice of Abandonment mailed on April 15, 2005.

According to the April 15th Notice of Abandonment, the applicant failed to timely file a proper reply to an Office Action mailed on August 2, 2004. This is incorrect. Applicant timely filed an Amendment in response to the Office Action on November 12, 2004.

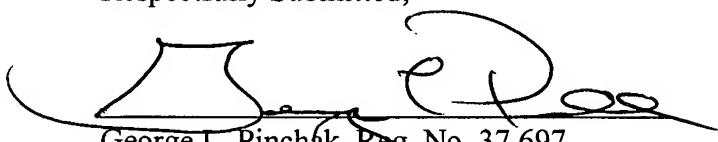
Attached hereto are true copies of an Amendment and Amendment transmittal filed on November 12, 2004. Also attached hereto is a true copy of the Return Postcard which was

received, stamped and returned to the firm by the OIPE Department of the Patent and Trademark Office, dated November 15, 2004.

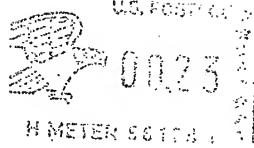
In view of the foregoing, it is respectfully requested that the Notice of Abandonment be withdrawn and the application restored to active status. It is believed that no fee are required in connection with this Petition, but if any fees are required, authorization is hereby given to charge all such fees to deposit account 23-0630.

Respectfully Submitted,

Date: 4/26/05

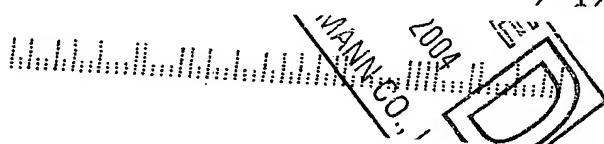


George L. Pinchak, Reg. No. 37,697



DC
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CLEVELAND, OHIO 44114-2518

FILE NO:16-343 ATTY:SJS
DUE DATE:03-15-2005 (20050315)
SUPERIOR TOOL /INIT:(20041115)
ACTION:09 RES PER:4 MONTHS DK1
/ 1776



1 P
APR 29 2003
PATENT & TRADEMARK OFFICE

PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: James A. Kovach

Serial No.: 10/602,460 Group No.: 3723

Filed: June 23, 2003 Examiner: Bryan R. Muller

For: TUB DRAIN WRENCH

Docket No.: 16-343

MAIL STOP NO FEE AMENDMENT

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

AMENDMENT TRANSMITTAL

1. Transmitted herewith is an amendment for approval by examiner for this application.

STATUS

2. Applicant is

a small entity
 other than a small entity.

CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: "Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450".

Patricia L. Tanner

(Type or print name of person mailing paper)

Patricia L. Tanner
(Signature of person mailing paper)

Date: November 12, 2004

EXTENSION OF TERM

3. The proceedings herein are for a patent application and the provisions of 37CFR 1.136 apply.

(complete (a) or (b) as applicable)

(a) Applicant petitions for an extension of time for the total number of months checked below:

<u>Extension (months)</u>	<u>Fee for other than small entity</u>	<u>Fee for small entity</u>
one month	\$ 110.00	\$ 55.00
two months	410.00	205.00
three months	930.00	465.00
four months	1,450.00	7250.00

Fee \$ _____

If an additional extension of time is required please consider this a petition therefor.

(check and complete the next item, if applicable)

An extension for _____ months has already been secured and the fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ _____

OR

(b) XXX Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

FEE FOR CLAIMS

4. The fee for claims has been calculated as shown below:

(Col. 1)	(Col. 2)	(Col. 3)	Small Entity	Other than a Small Entity
Claims Remaining After Amendment	Highest No. Previously Paid for	Present EXTRA	Rate	Addit. Fee
TOTAL	MINUS 20	= x 9 = \$	x 18 = \$	Addit. Fee
INDEP.	MINUS 3	= x 43 = \$	x 86 = \$	Rate
First Presentation of Multiple Dep. Claim			x 125 = \$	x 250 = \$

Total \$ or Total \$

* If the Highest No. Previously Paid for in this space is less than 20, enter "20".

** If the Highest No. Previously Paid for in this space is less than 3, enter "3".

(c) XXX No additional fee is required

OR

(d) Total additional fee required \$ _____

FEE PAYMENT

5. Attached is a check in the sum of \$ _____
Charge Account No. 23-0630 in the sum of \$ _____

Fee Deficiency

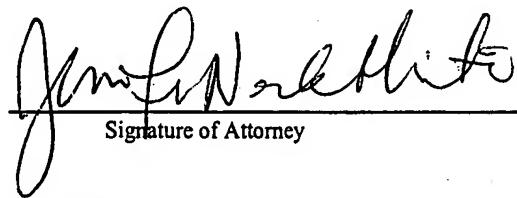
6. XXX If any additional extension and/or fee is required, this is the request therefor and to charge Account No. 23-0630

And/Or

XXX If any additional fee for claims is required, charge Account No. 23-0630.

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Signature of Attorney

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PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of James A. Kovach

Serial No.: 10/602,406

Group Art Unit: 3723

Filed: June 23, 2003

Examiner: Bryan R. Muller

For: TUB DRAIN WRENCH

Docket: 16-343

Watts, Hoffmann, Co., L.P.A.
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MS AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT

Dear Sir:

In response to the office action having a mailing date of August 12, 2004,
please amend this application as follows:

I hereby certify that this paper is being deposited today with the U.S. Postal Service as 1st Class Mail addressed to the Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on 11-12-04
By: Patti J. Kovach

In the claims

1- 9. (canceled)

10. (original) A drain spud wrench, comprising:

- a) a wrench body having a longitudinal axis;
- b) a first end portion extending from said wrench body having a first plurality of projections that define first and second transverse channels for receiving a cross-shaped portion of a drain spud;
- c) a first polygonal recess sized to accept a standard sized socket drive defined radially inward and axially spaced from said first and second transverse channels;
- d) a second polygonal recess that is smaller than said first polygonal recess defined axially inward of said first polygonal recess, said second recess being sized to accept a standard sized socket drive;
- e) a second end portion extending from said wrench body in a direction opposite from said first end portion, said second end portion includes a second plurality of projections that define third and fourth transverse channels for receiving a cross-shaped portion of a drain spud of second size;
- f) a third polygonal recess sized to accept a standard sized socket drive defined axially inward of said third and fourth generally transverse channels; and
- g) a fourth polygonal recess that is smaller than said third polygonal recess defined axially inward of said third polygonal recess, said fourth recess being sized to accept a standard sized socket drive.

11. (currently amended) A drain spud wrench assembly comprising:

- a) a socket driver;
- b) a socket drive extension removably connected to said socket driver;
- c) a drain wrench including:
 - i) a solid wrench body having a longitudinal axis, a first end portion extending from said wrench body in alignment with said longitudinal axis comprising structure configured to engage a drain spud, and a second end portion extending from said wrench body in a direction opposite from said first end portion, said second end portion defining a polygonal recess configured to accept a standard socket drive.

- ii) a first end portion extending from said wrench body in alignment with said longitudinal axis comprising a structure configured to engage a drain spud; said first end portion defining at least two polygonal recesses configured to accept different sized socket drives; and
- iii) a second end portion extending from said wrench body in a direction opposite from said first end portion and comprising a structure configured to engage a drain spud of second size, said second end portion defining at least two polygonal recesses configured to accept different sized socket drives.

12- 18. (canceled)

19. (new) The drain spud wrench assembly of Claim 11, wherein said first and second end structures configured to engage a drain spud are comprised of a plurality of projections that define a series of transverse channels.

20. (new) The drain spud wrench assembly of Claim 19, wherein polygonal recesses defined in the first and second end portions are axially inward and axially spaced from said transverse channels.

21. (new) A drain spud wrench comprising:

- a) a solid polygonal wrench body having a longitudinal axis;
- b) a first end portion extending from said wrench body comprising:
 - i) a plurality of projections that define first and second transverse channels for receiving a cross shaped portion of a drain spud;
 - ii) a first circular extension of said first end portion, where the first circular extension includes four slots aligned with gaps between said projections, said slots extend from a face of the first end portion, and are sloped radially outward; and
 - iii) a first and second polygonal recess extending axially inward from the face of said first end portion, forming a first and second polygonal receptacles,

where said first polygonal receptacle is configured to accept a standard socket driver and said second polygonal receptacle extends axially inward from the first polygonal receptacle and configured to accept a smaller socket driver than the first polygonal receptacle;

c) a second end portion extending from said wrench body comprising:

- i) a plurality of projections that define third and fourth transverse channels for receiving a cross shaped portion of a drain spud;
- ii) a second circular extension of said second portion, where the second circular extension includes four slots aligned with gaps between said projections, said slots extend from a face of the second end portion, and are sloped radially outward; and
- iii) a third and fourth polygonal recess extending axially inward from the face of said second end portion, forming a third and fourth polygonal receptacles, where said third polygonal receptacle is configured to accept a standard socket driver and said fourth polygonal receptacle extends axially inward from the third polygonal receptacle and configured to accept a smaller socket driver than the third polygonal receptacle.

22. (new) The spud drain wrench of Claim 21, wherein, the first and second end portions are of different size.

REMARKS

Claims 1-9 and 12-18 are canceled. Claim 11 is amended and Claims 19-22 are added. Accordingly, claims 10, 11 and 19-22 are pending. Reconsideration of the claims in view of the foregoing amendments and the following remarks is respectfully requested.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

The Office Action rejected Claim 10 under 103(a) as being unpatentable over U.S. Patent No. 4,237,754 to Battrick (herein "Battrick"), U.S. Patent No. 6,698,317 to Machovsky (herein "Machovsky"), U.S. Patent No. 6,269,717 to Bollinger (herein "Bollinger") and U.S. Patent No. Des. 311,315 to Duke (herein "Duke").

Claim 10 features a drain spud wrench having a longitudinal axis with two different sized end portions, a first end portion and a second end portion that extend from the wrench body. The first end portion contains a plurality of projections that define a first and second transverse channel for engaging a cross-shaped portion of sized drain spuds. The second end portion also contains a plurality of projections that define a third and fourth transverse channel for engaging a cross-shaped portion of sized drain spuds, which differ in size from drain spuds engaged by the first end portion. The first end portion contains a first polygonal recess that is defined radially inward and axially spaced from the first and second transverse channels and is sized to accept a standard sized socket drive. A second polygonal recess is also located in the first end portion, axially inward from the first polygonal recesses and capable of accepting a standard socket drive, but smaller in size than the first polygonal recess. The second end portion contains a third polygonal recess that is defined radially inward and axially spaced from the third and fourth transverse channels and is sized to accept a standard sized socket drive. A fourth polygonal recess is also located in the second end portion, axially inward from the third polygonal recess and capable of accepting a standard socket drive, but smaller in size than the third polygonal recess.

Claim 10 is not obvious in view of Battrick, Machovsky, Bollinger and Duke

references, since there is no motivation in these references that the combination suggested by the Office Action should be made. To establish a *prima facie* case of obviousness there must be some suggestion or motivation in the references to combine the teachings of the references. See MPEP § 2142 (8th Ed., Rev. Feb. 2003). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in prior art, and not based on the applicant's disclosure. *In re Vaeck*, 20 USPQ.2d 1438, 1442 (Fed. Cir. 1991). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 16 USPQ.2d 1430, 1432 (Fed. Cir. 1990).

The Office Action relies on Duke for a recess that is accessible from both ends, and Bollinger for the teaching of recesses for different socket sizes in a single tool. There is no motivation to combine Bollinger with Duke, because Duke discloses a tool that includes a single recess that passes through the entire tool. It would be contrary to the teachings of Duke to provide two differently sized recesses at one end of the tool that are separate from two additional recesses at the other end of the tool. To do so would require filling in a portion recess, which in the form disclosed by Duke, extends all the way through the tool. At most, Bollinger only provides motivation to add one recess to each end of the tool. The resulting tool would only include two outer recesses connected by a central recess. This does not meet the four recesses required by Claim 10.

Further, motivation to combine Bollinger with Duke is lacking, since one of ordinary skill in the art would prefer the double recess be on the "tool adapter" opposed to the individual, very specialized tool disclosed by Duke. The motivation would be to place the double recess not in the tool having only one application, but in the Bollinger tool adapter since, "[o]ne skilled in the art will understand that there are numerous other tools that may be mounted to the tool adapter." Bollinger, Col. 4, Lines 58-60.

There is no motivation to combine Bollinger with Battrick. Such combination is not suggested by the references, since Battrick uses a "tubular shaft (10)" with a recess through the entire tool. The Battrick patent eliminates the need for additional manufacturing steps

in making polygonal recesses in solid bar stock by taking advantage of readily available tubing in its design. Battrick also uses a different means of turning the tool, which includes an attached slide bar connected through the center of the shaft. Even if it were possible to combine Bollinger with Battrick's tubular shaft there would be no motivation to do so, since Battrick contains its own independent means of turning the tool.

When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper. *Ex parte Skinner*, 2 USPQ.2d 1788, 1790 (Bd. Pat. App. & Inter. 1986). Claim 10 is not obvious and is in condition for allowance.

The Office Action rejected Claim 11 as being unpatentable over Machovsky in view of Bollinger. As amended, Claim 11 features a drain spud wrench assembly having a socket driver connected to a removable socket driver extension. Included in the assembly is a solid wrench body with a longitudinal axis. A first end portion extends from the wrench body in alignment with the wrench's longitudinal axis, and contains a structure configured to engage a drain spud. The first end portion also contains at least two polygonal recesses arranged to accept different sized socket drives. A second end portion extends from an end of the wrench body opposite of the first end portion, but in alignment with the wrench's longitudinal axis, and contains a structure configured to engage a drain spud. The second end portion, like the first end portion contains at least two polygonal recesses arranged to accept different sized socket drives.

There is no motivation to add the Duke recess that is accessible from both ends to the tool disclosed by Machovsky, since the tool disclosed by Machovsky includes a tool only at one end. Driving the Machovsky tool from the tool end would render the tool inoperable. "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purposes, then there is no suggestion or motivation to make the proposed modification." See MPEP § 2143.01 citing *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984)).

Accordingly, Claim 11 is in condition for allowance. Claims 19 and 20 depend from Claim 11, therefore both are in condition for allowance.

New Claim 21 features a drain spud wrench with a solid polygonal wrench body along a longitudinal axis. Extending from the wrench body is a first end portion having projections that define a first and second transverse channel for receiving a cross shaped portion of a drain spud. The first end portion contains a first circular extension having four slots aligned with gaps between the projections. The slots extend from the face of the first end portion, and are sloped radially outward. Extending axially inward from the face of the first end portion is a first and second polygonal recess that form a first and second polygonal receptacles, in which the first polygonal receptacle is configured to accept a standard socket driver. The second polygonal receptacle extends axially inward from the first polygonal receptacle and is configured to accept a smaller socket driver than the first polygonal receptacle. A second end portion is attached to the wrench body at the opposite end of the first end portion. The second end portion also possesses projections that define a third and fourth transverse channel for receiving a cross shaped portion of a drain spud. A second circular extension on the second end portion has four slots extending from the face of the second portion, and are sloped radially outward. Extending axially inward from the face of the second end portion is a third and forth polygonal recess that form a third and fourth polygonal receptacles, in which the third polygonal receptacle is configured to accept a standard socket driver. The fourth polygonal receptacle extends axially inward from the third polygonal receptacle and is configured to accept a smaller socket driver than the third polygonal receptacle.

The combination of features found in Claim 21 are not shown or suggested by the applied references. None of the references disclosing a spud drain wrench teach the solid wrench body of Claim 21 capable of using a two polygonal recesses at both ends of the tool. Duke and Battrick disclose a recess or tubing through the entire tool. Thus, Duke and Battrick lack the motivation of the filling required to incorporate the double recess taught by Bollinger. While the only remaining reference is Machovsky which contains only one tool end and becomes inoperable when driving occurs from the tool end.

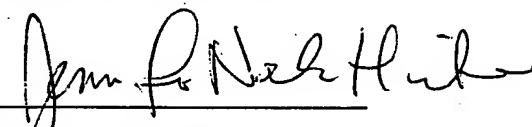
Accordingly, Claim 21 is in condition for allowance. Claim 22 depends from Claim

21 and is in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 23-0630 for any additional fees required under 37 C.F.R. § 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

Date: November 12, 2004



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